IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

MACON COUNTY INVESTMENTS, INC. and REACH ONE, TEACH ONE OF AMERICA, INC.,	)	
Plaintiffs,	)	
	)	**Civil Action No.: 3:06-cv-224-WKW**
v.	)	
SHERIFF DAVID WARREN, in his official capacity as the SHERIFF OF MACON COUNTY, ALABAMA,	)	
Defendant.	)	

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

COME NOW Macon County Investments, Inc. ("MCI") and Reach One, Teach One of America, Inc. ("Reach One, Teach One") pursuant to Rule 56 of the Federal Rules of Civil Procedure and hereby file this Motion for Summary Judgment. The Plaintiffs file contemporaneous with this Motion a Memorandum Brief in Support of Summary Judgment and Evidentiary Submissions. MCI and Reach One, Teach One state the following:

1. MCI and Reach One, Teach One filed this action citing the Sheriff's denial of their equal protection rights through his promulgation of rules and regulations of bingo gaming in Macon County.

2. MCI and Reach One, Teach One are seeking the following relief:

A. Preliminary and permanent injunctive relief prohibiting the Defendant Sheriff and his respective officials, agents, employees, and representatives from further operating under the First or Second Amended Rules.

B. Preliminary and permanent injunctive relief compelling the Defendant Sheriff and his respective officials, agents, employees, and representatives to grant the application of Reach One, Teach One and MCI's application for a Class B Bingo License in Macon County.

C. A declaratory judgment that the Defendant Sheriff's differential treatment towards the Plaintiffs is a denial of equal protection and that his actions twice amending the Original Rules and delaying the application of the Plaintiffs was and remains arbitrary and capricious.

D. A declaratory judgment from this Court that the First and Second Amended Rules are arbitrary and capricious and thereby null and void.

E. Awarding Plaintiffs their reasonable costs and expenses herein, including reasonable attorneys fees;

F. Any and all further relief that the Court deems necessary and proper to effect justice in this cause.

3. "The first step in determining whether legislation survives rational-basis scrutiny is identifying a legitimate government purpose.... The second step of rational-basis scrutiny asks whether a rational basis exists for the enacting governmental body to believe that the legislation would further the hypothesized purpose." *Ga. Manufactured Hous. Ass'n v. Spalding County*, 148 F.3d 1304, 1307 (11th Cir.1998).

4. The material undisputed facts show that the Sheriff has promulgated rules which effectively created a monopoly in bingo gaming within a private corporation.

5. The Sheriff overextended his authority to promulgate rules pursuant to Amendment 744 when he established this monopoly. "A governmental entity does not have a legitimate purpose to regulate beyond the authority conferred by its enabling legislation." *Seventh Street, LLC v. Baldwin County Planning and Zoning Com'n*, 172 Fed.Appx. 918, 921, 2006 WL 531446, *2 (11th Cir. 2006).

6. This extension in rule-making authority cannot be held as a legitimate government purpose. As such, he has violated MCI and Reach One, Teach One's right to equal protection under the laws.

7. The United States Supreme Court has held that "the [regulator] may not rely on a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary and irrational." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 446, 105 S. Ct. 3249, 87 L.Ed.2d 313 (1985). A distinction is deemed to be arbitrary and irrational when there is an inadequate or nonexistent connection between the classification and purpose.

8. The material undisputed facts show that the discriminatory aspects of the Sheriff's rules were done for arbitrary reasons with no factual foundations. The Sheriff could not reasonably connect these reasons to a legitimate governmental interest.

WHEREFORE, PREMISES CONSIDERED the Sheriff has overextended his rule-making authority and has created arbitrary rules and regulations. These actions have denied MCI and Reach One, Teach One equal protection under the law. The Plaintiffs respectfully request that this Court grant summary judgment in their favor.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon all counsel of record via this Court's electronic filing system on this the 1st day of June, 2007.

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